IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 410 OF 2006

Shri Charles Pais,
r/o. Golden Crest,
H.No. 41/9, Ansabhat,
Mapusa, Bardez, Goa. ..... Petitioner

V e r s u s

1. State of Goa,
through its chief Secretary, having
office at Secretariat,
Porvorim, Goa.

2. The Land Acquisition Officer,
P.W.D., (Cell),
Altinho, Panaji, Goa.

3. Village Panchayat of Sangolda,
Through its Secretary,
Sangolda, Bardez, Goa.

4. Smt. Vibhali V. Naik,
r/o. Mae De Deus Vaddo,
Sangolda, Bardez, Goa. ..... Respondents

Mr. D. Pangam, Advocate for the Petitioner.

Ms. L. Dharwadkar, Addl. Government Advocate for the Respondent nos. 1 and 2.

CORAM: R. M. S. KHANDEPARKAR &
R. S. MOHITE, JJ.

DATE: 13th August, 2007.

ORAL ORDER

Heard.

2. The petitioner in this case challenges the acquisition proceedings initiated pursuant to issuance of notification under Section 4 and further confirmed by declaration under Section 6 dated 24.05.2006, whereby the property of the petitioner bearing survey no. 97 sub-division 22 part and 23 part, situated in the Village of Sangolda Taluka of Bardez, is sought to be acquired for the purpose of construction of road at Mae De Deus at Sangolda. The challenge is on the ground that the Collector failed to make necessary recommendations in relation to the objections filed by the petitioner regarding malafide on the part of the Village Panchayat in initiating the acquisition proceedings solely for the benefit of the brother in law of the Sarpanch of the Village Panchayat. Placing reliance in the decisions in the matter of ***Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chennai & Ors. [(2005) 7 S.C.C. 627)], Shri Mandir Sita Ramji v. Lt. Governor of Delhi & Ors. [(1975) 4 S.C.C. 298]*** and ***Sukumar M. Khot & Ors. v. State of Maharashtra & Ors. [2006 (4) Bom.C.R. 337],*** learned Advocate appearing for the petitioner submitted that in terms of Section 5A of the said Act, it was incumbent for the Collector holding inquiry under the said provisions of law, to take note of the objections sought to be raised by the objector and thereupon to make necessary recommendations to the Government before the latter takes final decision on the aspect of acquisition of land. In the case at hand, according to the learned Counsel, the report dated 19.04.2006, discloses that the Collector failed to perform his duty in that regard. Further, his contention is that Section 5A assures the land owner that his land is not acquired without following the due process of law and in that regard a proper hearing be given to objector and on the basis of such hearing, the Collector to make the report. Mere rejections of objections raised by the party that itself does not constitute compliance of the said provision of the Land Acquisition Act. In the case at hand, the Collector having failed

to perform the said duty in relations to the objections raised by the petitioner, the report is bad in law.

3. The contentions sought to be raised on behalf of the petitioner are denied by the respondent and it has been categorically stated in the affidavit in reply filed on behalf of the respondent that the objections which were raised by the petitioner were duly considered and necessary report was submitted to the Government before the final decision was taken by the Government. The report dated 19.04.2006 clearly discloses that the objections which were filed by the petitioner were duly referred to the Block Development Officer and further to the concerned Village Panchayat and necessary report was collected from the concerned Village Panchayat and BDO. In the course of the hearing under Section 5A, the Collector had also granted appropriate hearing to the petitioner and considering the entire evidence placed on record, the Collector had specifically stated in the report that the proposed road will benefit large number of people and residents of Sangolda and, therefore, the acquisition of land as proposed by the Acquiring Department, was required to be considered. A proper reading of the report along with the materials forwarded to the Government reveals that the Collector has not only taken note of the objections raised by the petitioner as regards the alleged malafide on the part of the Sarpanch in initiating acquisition proceedings in relation to the land of the petitioner, it also discloses consideration of such objections and rejections thereof while justifying the need of the land, including that of the petitioner, for the proposed acquisition and that it is for the benefit of large number of the residents of Sangolda. The finding arrived at by the Collector in his report that the proposed land would be beneficial to large number of residents of Sangolda itself discloses that the contention of the

petitioner that the acquisition of the land belonging to the petitioner was initiated by the Village Panchayat for the benefit of the brother in law of the Sarpanch, was not only considered but was rejected for valid reasons. It is always to be understood that the report under Section 5A of the said Act, is not a Judgment by a Judicial Officer. Report under Section 5A, on the whole, discloses proper application of mind by the Collector to the facts and circumstances required to be considered by him and there is no scope for interference in the said report. As regards the decision in the ***Hindustan Petroluem Corpn. Ltd. v. Darius Shapur Chenai & Ors.***(supra) is concerned, that was a case where there was no proper opportunity given to the objectors of being heard and no proper findings were arrived at on the objections raised before the report was submitted by the Collector. The report nowhere disclosed proper application of mind by the Collector to the objections which were raised and obviously it revealed that the Collector had failed to perform his duty in relation to the objections raised by the objector. The Judgment in the case of ***Hindustan Petroluem Corpn. Ltd. v. Darius Shapur Chenai & Ors.***(supra), is essentially a case where the High Court instead of considering whether the Collector had discharged his duties in terms of Section 5A had proceeded to consider whether the objections raised by the objector were considered by the Government. In that regard, the Apex Court had observed that Section 5A of the Act confers a valuable right in favour of a person whose land is sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of “eminent domain” may interfere with the right to a property of a person by acquiring the same but the same must be for a public purpose and on payment of reasonable compensation therefore. The ratio of the Judgment in the case of ***Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai & Ors.***(supra) is that

"*Formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones*." In the case at hand, the report apparently discloses that the question whether acquisition of the land in question for the construction of road would benefit the persons of the locality or not, was duly considered by the Collector while rejecting the complaint that the acquisition is for the benefit of family of the brother in law of the Sarpanch of the Village Panchayat. Being so, the Collector has considered the relevant factors and rejected the irrelevant factors while submitting the report. The decision in the case of ***Shri Mandir Sita Ramji v. Lt. Governor of Delhi & Ors***. (supra), is to the effect that the observance of the procedure laid down by statute before depriving a person of his property is necessary to generate the feeling that rule of law prevails in this country and further the failure of the Land Acquisition Officer to inquire into the objection after giving the applicant an opportunity of being heard would show that he has declined to exercise his jurisdiction under the Section. Undisputably, in the case at hand, the petitioner was given an opportunity of being heard in the matter; that the report also discloses that the Collector had inspected the site not once but twice before arriving at the finding that the land was a suitable land for the purpose of construction of the road and for the benefits of the residents of the locality. In ***Sukumar M. Khot & Ors. v. State of Maharashtra & Ors.***(supra), the Division Bench of this Court has held that the sub-section (2) of Section 5A mandates that the Collector shall "after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings

held by him, for the decision of that Government." It was further held that it was the duty of the Collector to afford an opportunity of being heard to each objector. It was also observed that the report of the Collector and his recommendations on the objections constitute a vital input that would enable the State Government to arrive at a decision as to whether the land should or should not be acquired. In the case at hand, it is not in dispute that apart from the land which is required for the construction of the road and which lies within the property belonging to the petitioner, remaining portion of the road has already been constructed on acquisition of land thereof. It is only the land of the petitioner that remains to be acquired and construction of the road to be completed. This fact, coupled with the report of the Collector which unequivocally states that the acquisition of land from the petitioner's property would be for the benefit of the residents in the locality, would disclose that the contentions which are sought to be raised on behalf of the petitioner about the failure on the part of the Collector to consider the objections and make recommendations are totally devoid of substance. The decision in the case of ***Sukumar M. Khot & Ors. v. State of Maharashtra & Ors.***(supra), therefore, is of no help to the petitioner.

5. For the reasons stated above, we find that no interference in the matter is required and, therefore, the petition fails and is dismissed.

R. M. S. KHANDEPARKAR, J.

R. S. MOHITE, J

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